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**THIS DISPOSITION
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Paper No. 10
RLS/TLC

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Zero Surge Inc.

Serial No. 75/731,013

Kenneth R. Schaefer for Zero Surge Inc.

Carolyn Pendleton, Trademark Examining Attorney, Law Office
103 (Dan Vavonese, Acting Managing Attorney).

Before Simms, Wendel and Bucher, Administrative Trademark
Judges.

Opinion by Simms, Administrative Trademark Judge:

Zero Surge Inc. (applicant), a New Jersey corporation,
has appealed from the final refusal of the Trademark
Examining Attorney to register the mark shown below

ZeroSurge

for electrical circuit protection apparatus, namely, surge
suppressors.¹ The Examining Attorney has refused

¹ Application Serial No. 75/731,013, filed June 17, 1999, based
upon applicant's allegations of use and use in commerce since May
22, 1989. In the original application, applicant claimed
ownership of a registration (Registration No. 1,642,622, issued

registration under Section 2(e)(1) of the Act, 15 USC § 1052(e)(1), arguing that applicant's mark merely describes a product which prevents electrical surges. Applicant and the Examining Attorney have submitted briefs but no oral hearing was requested.

We reverse.

Relying upon dictionary definitions, third-party registrations containing disclaimers of the word "ZERO," and Nexis excerpts showing that "zero" is synonymous with "no" or "none," the Examining Attorney argues that "ZERO" refers to something that is non-existent and that the combination of the two descriptive terms "ZERO" and "SURGE" merely describes a significant feature, function or characteristic of applicant's goods--that applicant's good create a state of "zero surge" or no surge of electricity.

The Nexis excerpts reveal such phrases containing the word "zero" as:

The system uses a "zero electrical power"
acoustic lens...

Electric cars result in zero emission...

Superconductivity, the phenomenon of
creating zero resistance to electricity in
materials cooled to...

April 30, 1991), which is of essentially the same mark for the same goods. That registration was canceled under Section 8 of the Act, 15 USC § 1058.

...hybrid-electric technology will be
available that produces "zero pollution"...

...how much cheaper can you get when you have
zero energy costs...

Applicant, on the other hand, argues that its
mark uniquely identifies applicant's goods and no
other goods in the industry. Applicant has also noted
the existence of such registrations as SURGE CONTROL,
SURGEBLOC, SURGE CHECK and SURGE MANAGER. Finally,
applicant points out that the Office granted it a
registration covering essentially the same mark and
the same goods without resort to Section 2(f) of the
Act.²

Upon careful consideration of this record and the
arguments of the attorneys, it is our judgment that
the mark sought to be registered is suggestive rather
than merely descriptive of applicant's goods. The
Board has on numerous occasions noted that there is
often a fine line between suggestive and merely
descriptive marks and that this determination can be
somewhat subjective. However, we believe that the
mark ZEROSURGE can best be categorized as a mark which
is suggestive, perhaps highly so, of applicant's surge

² Applicant's attachment of other evidence with its appeal brief
is untimely. See Trademark Rule 2.142(d) and TBMP § 1207.01.

suppressors which are intended to protect devices from excessive voltage. Aside from the fact that the Examining Attorney has produced no evidence of the descriptive use of these words, applicant's mark contains a rather informal (or perhaps grammatically incorrect) usage of the word "ZERO" in the mark. As such the mark only suggests that applicant's surge suppressors will reduce or eliminate an electrical surge. See, for example, *In re Pennwalt Corp.*, 173 USPQ 317 (TTAB 1972) (DRI-FOOT for anti-perspirant foot deodorant held not merely descriptive). Finally, of course, if there is doubt about the merely descriptive character of a mark, that doubt is to be resolved in favor of publication.

Decision: The refusal of registration is reversed.